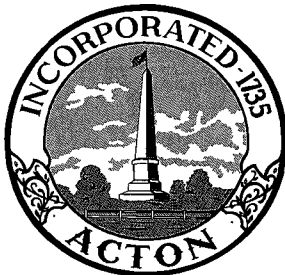


EXTRA INFORMATION

10-05-09

4/6

Site Plan Special Permit – 07/06/72 – 43, 1st Amendment (Berry)
Colonial Spirits Liquor Store
87 Great Road
October 5, 2009



Board of Selectmen

TOWN OF ACTON

472 Main Street
Acton, Massachusetts 01720
Telephone (978) 264-9612
Fax (978) 264-9630
bos@acton-ma.gov
www.acton-ma.gov

**First Amendment
of
Site Plan Special Permit
DECISION
#07/06/72 - 43**

(Colonial Spirits, c/o Stephen Steinberg)

October 5, 2009

GRANTED

Decision of the Acton Board of Selectmen (hereinafter the Board) on the request for a site plan special permit amendment made by George Dimakarakos and Joseph March of Stamski and McNary, Inc. on behalf of Colonial Spirits c/o Stephen Steinberg (hereinafter the Applicant) in a letter to the Board dated August 19, 2009 for property located at 87 Great Road in Acton, Massachusetts, owned by Morrill Edward L ETA, c/o 87 Great Rd Properties, LLC., 1560 Monument Street, Concord, MA 01742. The property is shown on the 2007 Acton Town Atlas map G-5 as parcels 8 (hereinafter the Site).

The Board had issued site plan special permit decision #07/06/72 - 43 on September 8, 1972 – hereinafter referred to as the Original Decision. The matter of this amendment came before the

Decision 07/06/72-43, Site Plan Special Permit Amendment #1, 10/05/09

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Board at its meeting on October 5, 2009. The minutes of the meeting and documents on which this decision is based upon may be referred to in the Town Clerk's office or the office of the Board at the Acton Town Hall.

1 EXHIBITS

Submitted for the Board's deliberation were the following exhibits:

- 1.1 Application for a site plan special permit amendment received August 20, 2009 consisting of the following:
 - Application letter by Stamski and McNary, Inc, dated August 19, 2009 with a brief description and explanation of the proposed amendment.
 - Copy of original Site Development Plan #07/06/72-43.
 - Copy of a 12/4/08 email from DRB to applicant.
 - Copy of a 12/17/08 letter from applicant to DRB.
 - Site plan drawing for "69-93 Great Road, Acton, Mass." drawn by Stamski and McNary, Inc., dated August 19, 2009.
 - Architectural floor and elevation plans for "Colonial Spirits Mezzanine Addition" prepared by E.J. Rempelakis Associates, Architects, and consisting of the following three sheets:
 - A-1: Ground Floor Plan & Mezzanine Floor Plan, dated January 21, 2009,
 - A-2: Ground Floor Plan & Mezzanine Floor Plan, dated January 21, 2009 and revised July 14, 2009.
 - A-3: Front & Right Side Elevations, dated January 21, 2009.
 - Filing fee.
- 1.2 Interdepartmental communication received from:
 - Acton Engineering Department, 09/15/09.
 - Acton Health Department, undated.
 - Acton Tree Warden & Municipal Properties Director, 09/14/09.
 - Acton Design Review Board, 09/16/09.

Exhibit 1.1 is hereinafter referred to as the Amended Plan.

2 FINDINGS AND CONCLUSIONS

- 2.1 The Site is located within the East Acton Village (EAV) zoning district and Groundwater Protection District Zone 3.
- 2.2 The Site was originally developed in the early 1970's and has since undergone several use changes.
- 2.3 This amendment is seeking to enlarge an existing mezzanine space. The additional space will be constructed as an aerial protrusion on the eastern side of the building.
- 2.4 The new mezzanine space will be located above an already existing paved area.
- 2.5 The new mezzanine space will be approximately 864 square feet in footprint size.
- 2.6 The new mezzanine floor space is not required to be counted in the gross floor area calculations as the proposed floor-to-ceiling height is less than six feet.
- 2.7 Although the applicant acknowledges the loss of existing parking spaces, based upon the requirements of Section 6.9.1.4, the existing parking lot would appear to remain in compliance with the minimum Bylaw parking requirements.

- 2.8 Since the Original Decision, the requirements for site design, parking lots, and landscaping have changed. The Site could be nonconforming with regards to these requirements.
- 2.9 The proposed site modifications do not increase the overall amount of impervious area on the Site. With the approval of this amendment, any existing non-conformities would remain.
- 2.10 The proposed is a minor amendment of the Original Decision and does not warrant a public hearing.
- 2.11 The Board has received comments from various Town departments, which are listed in Exhibit 1.2 above. These comments were considered by the Board in its deliberations, were made available to the Applicant, and are incorporated into this decision as deemed appropriate by the Board.
- 2.12 The Amended Plan as further modified and conditioned herein is consistent with the Master Plan, will not be detrimental or injurious to the neighborhood in which the use is to take place, provides for convenient and safe vehicular and pedestrian movement within and through the site, provides an adequate number of parking spaces, provides adequate methods of refuse and waste removal from the site, and is in harmony with the purpose and intent of the Bylaw.

3 BOARD ACTION

Therefore, the Board voted on October 5, 2009 to GRANT the requested First Amendment to site plan special permit #07/06/72 – 43 subject to and with the benefit of the following plan modifications and conditions.

3.1 PLAN MODIFICATIONS

The Building Commissioner shall not issue a building permit, nor shall any construction activity begin on the Site, until and unless the Zoning Enforcement Officer (ZEO) confirms that the Plan is revised to include the following additional, corrected, or modified information. Except where otherwise provided, all such information shall be subject to the approval of the ZEO. Where approvals are required from persons or agencies other than the ZEO, the Applicant shall be responsible for providing evidence of such approvals to the ZEO.

- 3.1.1 Modify the proposed cedar fence located under the mezzanine addition to begin 8" above finished grade.
- 3.1.2 Relocate the existing handicap parking space which will be lost due to the mezzanine expansion. Identify the handicap parking space's new location on a parking lot layout plan.
- 3.1.3 Modify plan note on Page A-1 which currently states "Cut 6'-0" W x 6'-6" H Opening in Concrete Block Wall" to have the height of the opening more directly reflect the lower ceiling height of the new mezzanine space. The applicant could also provide sufficient justification to allow for a larger opening into a space with a lower ceiling height.
- 3.1.4 Indicate the location of any dumpsters for the subject use and enclose them within adequate screening with lockable gate, or provide written clarification that no outdoor dumpster will be required.

3.2 CONDITIONS

The following conditions shall be binding on the Applicant and its successors and assigns. Failure to adhere to these conditions shall render this entire special permit null and void, without force and effect, and shall constitute grounds for its revocation, and of any building or occupancy permit issued hereunder. The Town of Acton may elect to enforce compliance with this special permit using any and all powers available to it under the law.

- 3.2.1 The Applicant shall not cause or permit the runoff of water or erosion that result in the flooding or siltation of any street, way or drainage facility owned or maintained by the Town. If such runoff or erosion occurs, the Building Commissioner or the ZEO may order the immediate cessation of any excavation, construction and building activities until the conditions that caused the runoff or erosion have been corrected.
- 3.2.2 All requirements of the Board of Health must be met.
- 3.2.3 The applicant shall ensure that noise and dust emissions from the construction site are kept to a minimum.
- 3.2.4 The applicant shall ensure that absolutely no construction debris from the site enters adjoining properties, streets, public right-of-ways or drainage facility.
- 3.2.5 No work on the Site shall begin prior to the issuance of a building permit.
- 3.2.6 All work on the Site shall be conducted in accordance with the terms of the Site Plan Special Permit as issued in the Original Decision and amended herewith and shall conform with and be limited to the improvements shown on the Plan as modified herein.
- 3.2.7 All new or replacement water service lines shall be installed in accordance with the specifications of the Acton Water Supply District.
- 3.2.8 All construction activity on the property relating to this Site Plan Special Permit Amendment shall be limited to the hours of: Monday – Friday: 7:00am – 5:00pm; Saturday: 8:00am – 5:00pm; Sundays & Holidays: No work permitted.
- 3.2.9 Any further changes or modifications to the Site that are not in conformance with the Original Decision as amended herewith, shall require approval from the Board.
- 3.2.10 This First Amendment shall be recorded at the Middlesex South District Registry of Deeds or the Land Court prior to the issuance of a building permit for any of the proposed improvements and modifications on the Site.

3.3 LIMITATIONS

The authority granted to the Applicant under this special permit is limited as follows:

- 3.3.1 The foregoing required modifications and conditions have been stated for the purpose of emphasizing their importance, but are not intended to be all inclusive or to negate the remainder of the Bylaw and the Rules.
- 3.3.2 This special permit applies only to the Site identified in this decision and to the proposed use and activity as shown on the Plan.
- 3.3.3 Other approvals or permits required by the Bylaw, other governmental boards, agencies or bodies having jurisdiction shall not be assumed or implied by this decision.

- 3.3.4 Prior to any building permit being issued for the subject project, the applicant shall demonstrate compliance with any and all other comments/concerns provided by other municipal disciplines.
- 3.3.5 This Site Plan Special Permit First Amendment shall lapse if substantial use thereof has not commenced within two years of the filing date of this decision with the Town Clerk, except for good cause, or if construction under this special permit is not continued through to completion as continuously and expeditiously as is reasonable. For construction to continue towards completion as continuously and expeditiously as is reasonable, construction activity shall not rest for more than 1 year. A request to extend said time limits must be made in writing to the Board at least thirty (30) days prior to said expiration dates, and the Board herewith reserves its rights and powers to grant or deny such extension, to issue any appropriate changes to the special permit and to require any appropriate modifications of the Plan.
- 3.3.6 The Board hereby reserves its right and power to modify or amend the Plan and the terms and conditions of this special permit with or without a public hearing upon the request of the Applicant, his designees or assigns, or upon its own motion.

4.0 APPEALS

Any person aggrieved by this Decision may appeal pursuant to the General Laws, Chapter 40A, Section 17 within 20 days after filing of this Decision with the Acton Town Clerk.

The Town of Acton Board of Selectmen

Paulina S. Knibbe, Chair

Date Filed with Town Clerk

Eva Taylor, Town Clerk

This is to certify that the 20-day appeal period on this decision has passed and there have been no appeals made to this office.

Eva Taylor, Town Clerk

Date

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Copies furnished:

Applicant
Health Department
Town Clerk
Fire Chief
Owner

Planning Department
Engineering Dept.
Natural Resources Director
Police Chief
Assistant Assessor

Building Commissioner
Municipal Properties Director
Town Manager
Acton Water District